

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DERRICK DOBBINS,)	
)	CASE NO. 5:19CV0055
Plaintiff,)	
)	JUDGE BENITA Y. PEARSON
v.)	
)	
OSS INCORPORATED, <i>et al.</i> ,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Defendants.)	[Resolving ECF Nos. 26 and 30]

Pending is the Stipulated Dismissal of Plaintiff Derrick Dobbins and Defendants IRG Realty Advisors (“IRG”) and East End Residences, LLC’s (“East End”) ([ECF No. 30](#)), filed on June 21, 2019.

This action arises from an alleged assault on June 6, 2018. On January 9, 2019, IRG and East End, with the consent of Defendant OSS Incorporated, removed the case from state court to this Court on the basis of federal question jurisdiction pursuant to 28 U.S.C. §§ [1331](#), [1441](#), and [1446](#). See Notice of Removal ([ECF No. 1](#)). On April 10, 2019, Plaintiff filed a First Amended Complaint ([ECF No. 23](#)) alleging (1) assault and false statement to police officers; (2) respondeat superior; (3) intentional infliction of emotional distress; and (4) breach of contract and of the right to quiet enjoyment. [ECF No. 23](#) also alleges a public accommodation and civil rights claim under the Civil Rights Act of 1964, [42 U.S.C. § 2000e et seq.](#), against IRG and East End only.

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The Court hereby approves and adopts the Stipulated Dismissal ([ECF No. 30](#)). All claims of Plaintiff asserted against IRG and East End in the First Amended Complaint ([ECF No. 23](#)) and the Counterclaim of IRG and East End against Plaintiff ([ECF No. 28](#)) are dismissed with prejudice. Each party to bear its own costs. For the reasons stated below, the Court will remand the case to state court.

Plaintiff's First Amended Complaint ([ECF No. 23](#)) now contains only state law claims. However, jurisdiction in this case is based solely on the existence of a federal question, and the Court has jurisdiction over state law claims only insofar as they are pendent to a federal claim. Federal courts have the power to exercise pendent jurisdiction where the state and federal claims derive from a common nucleus of facts such that the plaintiff would ordinarily be expected to try them all in one judicial proceeding, and when the federal claim has sufficient substance to confer subject-matter jurisdiction. [28 U.S.C. § 1367](#); [United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 \(1966\)](#). Plaintiff, by eschewing his claim based on federal law for an alleged violation of the Civil Rights Act of 1964, has chosen to have the cause heard in state court. Since the federal claim has been withdrawn before trial and the remaining claims in [ECF No. 23](#) possesses no independent basis of federal jurisdiction, it is appropriate for this Court to remand the case to the Summit County, Ohio Court of Common Pleas. See [Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343 \(1988\)](#).

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IRG and East End's Motion to [Partially] Dismiss the First Amended Complaint ([ECF No. 26](#)), filed on April 24, 2019, is denied as moot.

IT IS SO ORDERED.

June 28, 2019
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge